

3. The dismissal of Plaintiffs' federal claims under Fed. R. Civ. P. 12(b)(6) requires dismissal of the Alabama Antitrust Act claim under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

4. Plaintiffs have failed to state a claim under the Alabama Antitrust Act, which applies only to transactions in intrastate commerce, and which is otherwise interpreted in accordance with federal antitrust law; thus, Plaintiffs' state law count fails to state a claim and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendants respectfully request that this Court dismiss with prejudice the First Amended Complaint, and grant Defendants such other relief as may be appropriate.

Respectfully submitted this the 24th day of March, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of March, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of such filing to the following:

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